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Group-Washington

January 9, 1994

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FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
Mail Stop 1170  
1919 M Street, N.W., Room 222  
Washington, DC 20554

Dear Mr. Caton:

*RE: MM Docket No. 94-131 - Amendments of Parts 21 and 74 of the Commission's Rules With Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service*

*PP Docket No. 93-253 - Implementation of Section 309(j) of the Communications Act - Competitive Bidding*

On behalf of **Pacific Telesis Enhanced Services**, please find enclosed an original and six copies of its "Comments" in the above proceeding.

Please stamp and return the provided copy to confirm your receipt. Please contact me should you have any questions or require additional information concerning this matter.

Sincerely,



Enclosure

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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

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| In the Matter of                         | ) |                           |
|  | ) |                           |
| Amendments of Parts 21 and 74 of the     | ) | MM Docket No. 94-131      |
| Commission's Rules With Regard to        | ) |                           |
| Filing Procedures in the Multipoint      | ) |                           |
| Distribution Service and in the          | ) | DOCKET FILE COPY ORIGINAL |
| Instructional Television Fixed Service   | ) |                           |
|  | ) |                           |
| and                                      | ) |                           |
|  | ) |                           |
| Implementation of Section 309(j) of the  | ) | PP Docket No. 93-253      |
| Communications Act - Competitive Bidding | ) |                           |

**COMMENTS BY PACIFIC TELESIS ENHANCED SERVICES  
IN RESPONSE TO NOTICE OF PROPOSED RULEMAKING**

Pacific Telesis Enhanced Services (hereinafter "PTES"), on behalf of itself and its subsidiaries, files this statement in response to the Commission's request for comments on its proposal to streamline the procedures by which applications for new facilities in the Multipoint Distribution Service (hereinafter "MDS") are filed and processed. PTES supports this rulemaking initiative provided it results in elimination of delays associated with the existing licensing process and encourages effective competition with wired cable. PTES does not comment on all issues raised in the NPRM. However, we reserve the right to reply to comments filed by other parties on any issues raised.

**I. Introduction.**

PTES believes that the rules established by this rulemaking should further four important principles:

1. Licenses should be awarded to those who value them the most;
2. Licenses should be granted such that the most value can be derived from them;

3. Processes adopted should encourage the rapid introduction of services; and
4. Processes adopted should prevent unjust enrichment, fraud and other misconduct which might impugn the integrity of the process.

We believe that most of the proposals favored by the commission were designed to further these principles, and to a large extent, PTES endorses the Commission's favored approach. Each of the comments which follow is designed to serve one or more of these principles.

## II. Predetermined Geographic Areas; All Channels as a Package.

PTES favors the approach which permits interested parties to submit for licenses for specific predetermined geographic areas, with short form applications serving to identify mutually exclusive applications, followed by competitive bidding for the contested licenses. We believe that these service areas should be sufficiently large such that major population centers can all be served by a single MDS operator. The geographic area should include the population center, and all contiguous areas likely to include population served out of the dominant population center. To that end, we believe that the television Areas of Dominant Influence (ADI) would be the appropriate geography for assignment of new licenses. We believe that the greatest value can be derived by license holders if they can acquire as much channel capacity as possible within the service area. This is necessary so potential subscribers may be offered large blocks of programming. It also improves the value of advertising since a larger number of subscribers can be reached with a single ad. If MDS operators can not offer large and diverse packages of programs to potential subscribers, and therefore reach a large number of subscribers, they will not be able to effectively compete with wired cable operators who already have the wired broadband capacity. Therefore, we prefer that all available channels within the geographical area be packaged and auctioned as a block. Furthermore, we would prefer that license

holders be permitted to establish stations sites anywhere within the geography subject to interference protection standards, and that the ADI boundary become the protected service area of the wireless cable system. All these proposals serve to increase the value of the license to the license holder by permitting the creation of a large and high capacity wireless cable system.

### III. Auctions.

The Commission has indicated it does not favor simultaneous multiple round bidding since it believes that the licenses will be of relatively low value and that there is little interdependence between licenses. We disagree. If licenses are offered utilizing the ADI approach, the licenses in the areas with the largest populations should be of significant value. Furthermore, due to the desire to achieve significant economies of scale, there may be some significant interdependence of MDS licenses in contiguous markets. Because we believe that MDS licenses in some markets will attract large sums, we think that oral bidding is inappropriate because it does not afford bidders adequate time to reflect between bids. Financial commitments of these magnitudes should not be made without proper reflection. Simultaneous multiple round bidding has many advantages. It ensures equal bidding opportunities for all bidders, provides bidders with equal information, and allows bidding to continue until the highest value bidder is identified. It also affords bidders adequate time to consider whether or not to continue bidding.

### IV. Designated Entities and Other Preferences.

PTES does not believe that spectrum set asides for MDS are an appropriate means to "ensure that small business, rural telephone companies, and businesses owned by members of minority groups and women are given the opportunity to participate in the provision of spectrum-based services." 47 U.S.C. § 309(j)(4)(D). Spectrum set aside would be inconsistent with the value creation principles since

the greatest value is created by permitting the licensee to acquire as much capacity as possible within the geographic area. PTES believes that preferences, to the extent necessary to serve a compelling interest or statutory mandate, should take the form of bidding credits or payment plans. We do not believe that set asides for existing operators or a separate initial round of auctions only for existing license holders ("First Window") would be in the public interest. Giving existing operators such preferences creates the potential for unjust enrichment of these operators since they are likely to face little competition for available spectrum due to the relative number and size of potential bidders. We would not oppose, however, including existing license holders within the class of bidders who could be given bidding preferences (i.e., bidding credits). To do so would further the principle of speeding the introduction of services since established license holders have the technical capability, existing capacity, and an imbedded base of customers; but without creating a windfall.

V. Prevention of Speculation.

PTES believes that the Commission should adopt rules which prevent unjust enrichment, fraud and other misconduct. Competitive bidding for contested licenses should substantially reduce the number of pure "speculators", and thereby reduce the burden of administration of applications. To further reduce the number of unqualified applicants, PTES proposes that the Commission consider adopting rules which require applicants to demonstrate technical and economic capacity to build MDS systems as part of the qualifying short form application process. This could be accomplished by establishment of bidding prerequisites such as access to financing; prior experience in constructing and maintaining cable, wireless cable, telephony or other communications systems; experience in creation of programming; and/or related marketing experience. Another deterrent to speculators is significant default penalties. If substantial enough, such penalties can

deter unqualified bidders from participating in the competitive bidding process. We believe the penalties should take the form of fines as well as a prohibition from participation in other auctions or holding other spectrum licenses.

VI. Conclusion.

The approach generally favored by the Commission to accomplish distribution of the MDS licenses appears reasonable to PTES. We would strongly urge the commission to make licenses available by television Areas of Dominant Influence, with all channels offered as a package in any ADI area, pursuant to a simultaneous multiple round bidding process. This approach would assure that licenses are awarded to those who most value them, streamline the spectrum acquisition process, and give the winning bidder the best chance of creating a viable competitor to the established wired cable operator.

Respectfully Submitted,

PACIFIC TELESIS ENHANCED SERVICES



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